

APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

This original application, 5 double-sided copies and one (1) single-sided copy must be filed with the Human Resources Division, Administrative Office of the Courts, 1501 W. Washington, Suite 221, Phoenix, AZ, 85007, no later than 3:00 p.m. on January 7, 2011. Read the application instructions thoroughly before completing this application form. The fact that you have applied is not confidential, responses to Section I of this application are made available to the public, and the information provided may be verified by Commission members. The names of applicants, interviewees and nominees are made public, and Commission files pertaining to nominees are provided to the Governor for review. This entire application, including the confidential portion (Section II), is forwarded to the Governor upon nomination by the Commission.

SECTION I: PUBLIC INFORMATION (QUESTIONS 1 THROUGH 71)

PERSONAL INFORMATION

1. Full Name: Joan Marie Sinclair
2. Have you ever used or been known by any other legal name? Yes If so, state name: Joan Marie Kuechle (1961-1995); Joan Marie Huls (1995-2006)
3. Office Address: 3131 West Durango Street, Phoenix, Arizona 85009
4. Have you been a resident of Arizona for the past five years? Yes
5. Have you been a resident of Maricopa County for the past year? Yes

6. Age: 49

(The Arizona Constitution, Article VI, §§22 and 37, require that judicial nominees be 30 years of age or older before taking office and younger than age 65 at the time the nomination is sent to the Governor.)

7. List your present and former political party registrations and approximate dates of each: Republican (1979-1986); Democrat (1986-1995); Independent (1995-2006); Democrat (2006-present)

(The Arizona Constitution, Article VI, §37, requires that not all nominees sent to the Governor be of the same political affiliation.)

8. Gender: Race/Ethnicity: ☒ White
☐ Hispanic or Latino (of any race)
☐ Black or African American
☐ American Indian or Alaska Native
☐ Asian
☐ Native Hawaiian/Pacific Islander
☐ Other: _____

(The Arizona Constitution, Article VI, §§36 and 41, require that the Commission consider the diversity of the state's or county's population in making its nominations. However, the primary consideration shall be merit.)

EDUCATIONAL BACKGROUND

9. List names and locations of schools attended (college, advanced degrees and law), dates attended and degrees.

LeMoyne College, Syracuse, New York (1979-1983), Bachelor of Arts

Karl-Franzens Universität, Graz, Austria (1981-1982), junior year abroad

State University of New York at Buffalo School of Law, Amherst, New York (1983-1986), Juris Doctor

10. List major and minor fields of study and extracurricular activities.

My college major was history and my minor was German. I received an honors degree for completing my course work in advanced honors classes. During my

sophomore and senior years I participated in a week-long working retreat assisting people living in rural Appalachia. In law school I was a member of the Buffalo Law Review my second year and a senior editor my third year. I taught research and writing as a teaching assistant my third year. This was a required course for first year students taken in conjunction with civil procedure.

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

I received a partial financial scholarship to college and an award for the best history paper my senior year. I graduated from college magna cum laude. I worked part time in the library during my freshman, sophomore and senior years of college. I worked every summer during college and law school running my own housecleaning business or at a local ice cream shop. The summer before my junior year abroad, I worked as an au pair with a family in New York City.

In law school I graduated in the top ten percent of my class. In my first year, I earned more than one-half "H" grades (honors grade and the equivalent of an A). My law school did not rank the students numerically. As noted above, I worked as a teaching assistant my third year of law school. I worked as a waitress on Cape Cod after my first year of law school. After my second year of law school, I worked at a firm in Rochester, New York.

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for administrative bodies, which require special admission to practice.

New York state bar-1987
 Georgia state bar-1988
 Arizona state bar-1995
 Northern District of Georgia-1988
 District of Arizona-2002

13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? No If so, explain.
- b. Have you ever had to take a bar examination more than once in order to be admitted to the bar of any state? No If so, explain.

14. Indicate your employment history since completing your formal education. List your current position first. If you have not been employed continuously since completing your formal education, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

EMPLOYER	DATES	LOCATION
Maricopa County Superior Court	8/06-present	Initial Appearance Court, Durango Juvenile Court
Dodge, Anderson, Mablesen, Steiner, Jones & Horowitz (formerly Lieberman, Dodge, Gerding & Anderson)	11/03-7/06	Phoenix, AZ
Meagher & Geer	8/02-10/03	Scottsdale, AZ
Arizona Supreme Court (Chief Justice Jones)	8/01-8/02	Phoenix, AZ
Arizona Death Penalty Judicial Assistance	12/98-8/01	Phoenix, AZ

Program

Maricopa County Attorney's Office	3/96-12/98	Phoenix, AZ
Office of the Tucson City Attorney's Office-Criminal Division	11/95-1/96	Tucson, AZ
Reay's Ranch Market (studying for AZ bar)	6/95-10/95	Tucson, AZ
Dekalb County Juvenile Court Solicitor's Office	3/89-5/95	Atlanta, GA
Federal Highway Administration U.S. Dep't of Transportation	3/88-3/89	Atlanta, GA
Social Security Disability Litigation Unit, U.S. Dep't of Health and Human Services	3/87-3/88	Atlanta, GA
Rite Aid pharmacy (awaiting NY bar results)	9/86-2/87	Buffalo, NY
Studying for NY bar exam	5/86-8/86	Buffalo, NY

15. List your current law partners and associates, if any. You may attach a firm letterhead or other printed list. Applicants who are judges should attach a list of judges currently on the bench in the court in which they serve.

See attached list

16. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

I am now a Commissioner for the Superior Court in Maricopa County. After my appointment, I was assigned to the Initial Appearance Court for 18 months. This is a criminal court assignment. Since December of 2007, I have been assigned to the Durango Juvenile Court.

17. List other areas of law in which you have practiced.

My legal experience is quite varied. I started practicing in Atlanta for the federal government after law school. I worked in social security disability litigation for a year before moving to the Federal Highway Administration. There I worked with

Filing Date: January 7, 2011

motor carrier regulations and environmental law disputes. Because I wanted to try courtroom work, I then took a position as an assistant solicitor in the Dekalb County Solicitor's Office prosecuting juvenile delinquent and abuse/neglect cases.

After getting married and moving to Arizona, I continued to prosecute with the Tucson City Attorney's Office and the Maricopa County Attorney's Office. In the latter office I handled both juvenile and adult cases. My interest in death penalty cases lead to a position as a staff attorney for the Superior Court of Arizona in the northern Arizona counties. My job was to assist trial court judges on death penalty cases with trial and sentencing issues.

I was fortunate to be offered a position as a law clerk at the Arizona Supreme Court by Chief Justice Charles "Bud" Jones. My intention after clerking was to enter private practice.

I practiced insurance coverage and bad faith litigation before moving to Dodge, Anderson where I practiced commercial litigation, employment law and criminal defense work before my appointment as a commissioner. My goal was to obtain a variety of work experience to become a judge.

18. Indicate any specialties for which you have applied for certification by the State Bar of Arizona and the results of that or of those applications.

Not applicable

19. Describe your typical clients.

As a public lawyer, I represented federal agencies and the public generally as a prosecutor. In private practice, my clients ranged from banks and insurance companies, to large pension funds, smaller businesses and individuals.

20. Have you served regularly in a fiduciary capacity other than as a lawyer representing clients? No If so, give details.

21. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

I drafted opinions when I clerked at the Arizona Supreme Court.

22. Have you practiced in adversary proceedings before administrative boards or commissions? Yes If so, state:

- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

I appeared before the Industrial Commission of Arizona in a complicated workers compensation case. I also appeared before the Arizona Department of Real Estate in two fairly straightforward cases.

- b. The approximate number of these matters in which you appeared as:

Sole Counsel: 3

Chief Counsel: _____

Associate Counsel: _____

23. Have you handled any matters that have been arbitrated or mediated? Yes
If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: 5

Chief Counsel: _____

Associate Counsel: 2

24. List not more than three contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, addresses (street and e-mail) and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case; and (4) a statement of any particular significance of the case. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential portion of this application.

Elaine Price v. Arizona Department of Real Estate

- (1) The proceeding took place in the fall of 2005.
(2) I represented Ms. Price and then-Assistant Attorney General Randy Delgado represented the Department. Mr. Delgado is now in private practice at Kutak Rock, 8601 North Scottsdale Road, Suite 300, Scottsdale, Arizona 85253, 480-429-5000, randy.delgado@kutakrock.com.
(3) Ms. Price wanted to obtain a real estate license despite a prior felony conviction for possession of illegal drugs and her history of illegal drug use.
(4) The significance of the case was personal to Ms. Price. She had turned her life around and this license represented an opportunity for her to improve her

life and the lives of family members relying on her.

Kiva Stevens v. Cheryl Rich

- (1) This matter took place in early 2005.
- (2) I represented Ms. Stevens and Ms. Candess Hunter represented Ms. Rich. Ms. Hunter's address is Hunter, Humphrey and Yavitz, 2633 East Indian School Road, Suite 440, Phoenix, Arizona 85016, 602-275-7733, hunter@hhylaw.com.
- (3) These two women were domestic partners for many years. While the case was a civil matter, it was treated as a quasi-family case.
- (4) The particular significance was that it was my first exposure to family law issues and determinations of property divisions in a familial context.

Judy Ybarra v. Elisabeth Kawakami

- (1) This case occurred in the fall of 2005.
- (2) I represented Ms. Kawakami. Mr. John Kerkorian represented Ms. Ybarra. Mr. Kerkorian's address is Ballard, Spahr, Andrews & Ingersoll, 1 East Washington Street, Suite 2300, Phoenix, Arizona 85004-2555, 602-798-5408, kerkorianj@ballardspahr.com.
- (3) This dispute centered on a female show dog and her puppies.
- (4) While a minor dispute, this case was enormously taxing both emotionally and physically for my client. I handled this case for her pro bono.

25. Have you represented clients in litigation in Federal or Arizona trial courts? Yes
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts:	1
State Courts of Record:	hundreds
Municipal/Justice Courts:	hundreds

The approximate percentage of those cases which have been:

Civil:	10%
Criminal:	90%

The approximate number of those cases in which you were:

Sole Counsel:	95%
Chief Counsel:	_____
Associate Counsel:	5%

The approximate percentage of those cases in which:

You conducted extensive discovery ¹ :	10%
You wrote and filed a motion for summary judgment:	8%
You wrote and filed a motion to dismiss:	7%
You argued a wholly or partially dispositive pre-trial, trial or post-trial motion (e.g., motion for summary judgment, motion for a directed verdict, motion for judgment notwithstanding the verdict):	2%
You made a contested court appearance (other than as set forth in above response)	90%
You negotiated a settlement:	80%
The court rendered judgment after trial:	35%
A jury rendered verdict:	1%
Disposition occurred prior to any verdict:	0%

The approximate number of cases you have taken to trial:

Court: hundreds Jury: 3

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

I tried one civil case and many criminal cases. Three of my criminal cases were jury trials. I tried hundreds of cases in juvenile court where there are only bench trials. Because I was a juvenile prosecutor in Georgia for 6 years and over 1 year here in Arizona, it is simply not possible for me to provide a specific number.

¹Extensive discovery is defined as discovery beyond standard interrogatories and depositions of the opposing party.

26. Have you practiced in the Federal or Arizona appellate courts? Yes If so, state:

The approximate number of your appeals which have been:

Civil: 100%

Criminal: _____

The approximate number of matters in which you appeared:

As counsel of record on the brief: AZ 1 U.S. _____

Personally in oral argument: AZ _____ U.S. _____

27. Have you served as a judicial law clerk or staff attorney to a court? Yes If so, state the name of the court and dates of service, and describe your experience.

I was a judicial law clerk to Chief Justice Charles "Bud" Jones from August 2001 until August 2002 at the Arizona Supreme Court. I briefed legal issues, drafted opinions and assisted with preparing the judge for oral argument. Albeit unusual, I did this in the middle of my career because clerking was something I had always wanted to do. I brought to that position more real life experience than clerks coming directly from law school and I took away a wonderful perspective on how appellate courts function and how appellate judges think.

I also worked as a staff attorney for the Superior Court of Arizona in Maricopa County and the northern Arizona counties from January 1999 until August 2001 in the Arizona Death Penalty Judicial Assistance Program. At that time, trial judges made the sentencing decision in capital cases. My job was to assist judges on these cases to reduce error. I researched legal issues, drafted special verdicts and supported the criminal trial bench in death penalty cases. This position gave me the opportunity to see the inner workings of trial court cases from the judges' perspective.

28. List not more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the presiding judge or officer before whom the case was heard; (3) the names, addresses (street and e-mail) and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential portion of this application.

Majed Quaiz v. DII Emerald Springs, LLC and Special Fund Division/No Insurance Section

- (1) This litigation took place before the Industrial Commission of Arizona in fall of 2005 and the spring of 2006.
- (2) Administrative Law Judge Margaret Fraser of the Industrial Commission of Arizona heard this case.
- (3) I represented DII Emerald Springs LLC, the party alleged to be the statutory employer. Suzanne Scheiner Marwil represented the Special Fund. Ms. Marwil's address is the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, 602-542-6905, smarwil@ica.state.az.us. Ms. Julie Doherty represented Hunter Employment Services. Her address is Doherty & Venezia, 4000 North Central Avenue, Suite 1720, Phoenix, Arizona 85012, 602-277-0980, jdsmv@aol.com. Mr. Dennis Kurth represented Berkey Construction. His address is Taylor and Associates, 320 East Virginia, Suite 100, Phoenix, Arizona 85004, 602-263-5307, dkurth@taylorandassociates.net. Mr. N. Douglas Grimwood represented Mr. Majed Quaiz. His address is the Grimwood Law Firm, 301 East Bethany Home Road, Suite A-205, Phoenix, Arizona, 85012, 602-265-4995, ndgrimwood@grimwoodlaw.com. Mr. Michael Logsdon represented himself.
- (4) This case involved a tragic accident in which Mr. Quaiz, a framer, fell through the roof of a house under construction and injured his spine. He is now a paraplegic. He filed workers compensation claims against Mr. Michael Logsdon, his immediate supervisor, and arguably a subcontractor on the construction project. Mr. Quaiz also filed a claim against Berkey Construction, arguably the general contractor on the construction project, and also against DII Emerald Springs LLC, the developer of the project. The Special Fund brought in Hunter Employment Services as a defendant also. The primary issue for my client was whether he was a statutory employer of Mr. Quaiz. Several depositions were taken in the summer of 2005, and hearings were held in October 2005 and February 2006. The Special Fund, Mr. Quaiz and my client negotiated a proposed settlement agreement shortly before the October 2005 hearing, but the ALJ did not rule on that proposed agreement until the litigation concluded.
- (5) The significance of this case is that there was very little case law on this portion of the statute relative to statutory employers. The case was complex with many involved parties. Given the severe injuries suffered by Mr. Quaiz, the case represented a significant amount of potential damages for my client.

Bell Towne Centre Associates, LLC v. Harkins Paradise Cinemas, LLC and Harcourt General, Inc.

- (1) This case went to trial in January 2004.
- (2) Judge Alan Kamin of the Superior Court in Maricopa County tried this bench

trial.

- (3) Mr. Paul Gerding, Jr. and I represented Harkins. Mr. Gerding's current address is Kutak Rock, 8601 North Scottsdale Road, Suite 300, Scottsdale, Arizona 85253, 480-429-5000, p.gerding.jr@kutakrock.com. Mr. Robert Shull represented Bell Towne. His address is Mariscal, Weeks, McIntyre & Friedlander, 2901 North Central Avenue, Suite 200, Phoenix, Arizona 85012, 602-285-5010, rob.shull@mwmf.com. Mr. Jess Lorona represented Harcourt. His address is Lorona, Steiner & Ducar, Ltd., 3003 North Central Avenue, Suite 1500, Phoenix, Arizona 85012, 602-277-9925, jlrona@azlawyers.com.
- (4) This case was a multimillion dollar commercial dispute over a breach of a lease, rental property and an alleged guaranty.
- (5) The significance of the case was the enormous amount of money at stake.

BankUSA v. Elam

- (1) This case took place between mid-2004 and early 2005.
- (2) It was decided on summary judgment motion by Judge Margaret Downie of the Superior Court of Arizona in Maricopa County in May 2005.
- (3) I represented the bank along with Ms. Paige Martin and Mr. Marc Lieberman. Ms. Martin and Mr. Lieberman's current address is Kutak Rock, 8601 North Scottsdale Road, Suite 300, Scottsdale, Arizona 85253, 480-429-5000, paige.martin@kutakrock.com, marc.lieberman@kutakrock.com. The Elams were represented by Mr. Dan Kloberdanz. Mr. Kloberdanz' address is Berens, Kozub & Kloberdanz, 7047 East Greenway Road, Suite 140, Scottsdale, Arizona 85254, 480-624-2777, dkloberdanz@bkl-az.com.
- (4) This case involved the bank seeking to obtain a deficiency judgment against the Elams for sums still owing on construction loans made to build a "spec" house.
- (5) The particular significance of this case was that the anti-deficiency statute contains an exception where the house was "utilized as a dwelling." There is no case law directly on point so both sides argued the purpose and policy of the statute.

State v. Thebe Monyamane

- (1) This case went to trial in 1998.
- (2) It was tried before Judge Peter Reinstein of the Superior Court of Arizona in Maricopa County.
- (3) I represented the state along with Ms. Kris Lehman of the Maricopa County Attorney's Office. Ms. Lehman is still with that office at 100 West Washington Street, Suite 2100, Phoenix, Arizona 85003, 602-372-0156, LEHMANK@mcao.maricopa.gov. The defendant was represented by Mr. James Park. His address is the Park Law Office, PLC, 2702 North 3rd Street, Suite 4005, Phoenix, Arizona 85004, 602-462-5700, no e-mail address available.

- (4) The case involved the defendant's possession of illegal drugs.
- (5) The particular significance was that the conviction had deportation ramifications for the defendant and it was my second jury trial. It was my first jury trial in superior court.

In the Matter of R.A.

- (1) This juvenile transfer hearing took place in approximately 1992.
- (2) The case was tried before Judge Madeline Griffin of the Dekalb County Juvenile Court in Dekalb County, Georgia.
- (3) I represented the state and Ms. Bess Walthour represented the juvenile. Ms. Walthour's current contact information is 2875 Pinehigh Court, Duluth, Georgia 30096, 770-368-0044, blwalthour@bellsouth.net.
- (4) This case involved a rape charge. The defendant was 16 years old at the time of this offense. The victim was a middle aged woman. The incident took place in her home in the middle of the night.
- (5) The significance of this case was that the judge chose not to transfer this juvenile's case to adult court. She kept the matter in juvenile court where he would be released in only a few years. This stranger-on-stranger rape case was unusual for juvenile court. I felt quite strongly that this young man represented an enormous danger to society and that he rightfully belonged in adult court. I appealed the judge's ruling but was unsuccessful.

29. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

I was appointed a Commissioner of the Superior Court in Maricopa County in July, 2006. My first assignment was to initial appearance court in the 4th Avenue jail. I worked there from August, 2006 until December, 2007 when I was transferred to the Durango Juvenile Court where I am still located.

At the initial appearance court I handled three calendars per day of about 40 individuals each. My job was to inform the person of the charges; appoint a lawyer; inform the person of their next court date; set release conditions or bond; or hold the person without bond. I also handled warrants from law enforcement agencies from the entire Phoenix metropolitan area. The initial appearance court is a high volume court where I made critical decisions quickly with little information. I was there during the time that Proposition 100 first took effect with

all the attendant publicity and court scrutiny.

My assignment to the Durango Juvenile Court allows me to handle a variety of cases including juvenile delinquency criminal matters, civil dependency cases up to and including severance trials, and adoption hearings. I oversee a division and handle cases from inception to conclusion. Dependency cases involve multiple hearings, multiple parties and permanency decisions for abused or neglected children. In the past I also handled Drug Court, a specialty court designed to provide rehabilitation for juveniles with substance abuse issues.

In early 2003 I handled a fee dispute pro bono for the Arizona State Bar. The issue involved a client, her former lawyer and her new lawyer. Both sides submitted written materials and evidence at a short hearing. I issued a ruling after the hearing including both my conclusion and my reasoning.

I have just been appointed to be a volunteer attorney member of the Arizona Supreme Court's new disciplinary process. I will work on panels with the presiding disciplinary judge and a volunteer public member and may also serve as a settlement officer in this same process.

30. List not more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, addresses (street and e-mail) and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case. You may reveal nonpublic, personal, identifying information relating to client or litigant names or similar information in the confidential portion of this application.

In the Matter of Sarah L.

- (1) This dependency case was tried in January and February of 2008.
- (2) It took place in the Durango Juvenile Court.
- (3) Assistant Attorney General Deanna Sandler represented the Arizona Department of Economic Security. Her address now is the Legal Defender's Office, 222 North Central Avenue, Suite 8100, Phoenix, Arizona 85004, 602-506-8800, Dede.Sandler@old.maricopa.gov. Carla Sanders represented the girl's father. Her address is the Legal Defender's Office, 222 North Central Avenue, Suite 8100, Phoenix, Arizona 85004, 602-506-8800, carla.sanders@old.maricopa.gov. Iller Hardy was the guardian ad litem for the girl. Her address is Law Office of Iller M. Hardy, 202 East McDowell Road, Suite 165, Phoenix, Arizona 85004, 602-595-0436, no e-mail address available. The petitioners represented themselves.
- (4) This case involved the petitioners, who were members of the girl's church, asking the Court to find the girl dependent as to her father so that the girl

could be placed with them and remain in their custody. The girl's mother was an ardent member of this church and the entire family was involved with the church while the mother was alive. After the mother passed away, the father broke away from the church.

- (5) The significance of the case was that it was my first dependency trial. It presented interesting issues relative to the meaning of dependency under Arizona law. In issuing my ruling, I analyzed the applicable statute and case law in conjunction with the facts. This was my first "under advisement" ruling.

In the Matter of Kyle L. and Stormie L.

- (1) This guardianship hearing was held in January and February of 2008.
- (2) The evidentiary hearing was held in the Durango Juvenile Court.
- (3) The guardian ad litem was Leslie Hatfield. Her address is the Office of the Legal Advocate, 3800 North Central Avenue, Suite 1500, Phoenix, Arizona 85012, 602-506-5379, hatfiel@mail.maricopa.gov. Thomas Vierling represented the guardian (the children's maternal grandmother). His contact information is 852 North Sixth Avenue, Phoenix, Arizona 85003, 602-525-9383, lilmup@aol.com. Joel Hoffman represented the father. His contact information is at Warner, Angle, Hallam, Jackson & Formanek, 3550 North Central Avenue, Suite 1500, Phoenix, Arizona 85012, 602-264-7101, jhoffman@warnerengle.com. Kathleen Mucerino represented the boy. Her contact information is P.O. Box 1739, Sun City, Arizona 85372, 623-297-2169, Kathleen.Mucerino@azbar.org.
- (4) The father of the children had been absent from the children's lives for many years. Because of the mother's issues, the children had been adjudicated dependent and placed with their maternal grandmother. The Department of Economic Security filed a motion for the grandmother to become the children's permanent guardian. Shortly before the guardianship proceedings, the father found out about the dependency and became involved. Despite living out of state, the father made a considerable effort to visit the children and re-establish a bond with them. The hearing took place when the father petitioned the Court for a revocation of the guardianship.
- (5) The significance of the case was that the pivotal issue before the Court was the best interests of the children. The decision was extraordinarily difficult as both parties loved these children and could properly care for them.

In the Matter of Isaac F.

- (1) This evidentiary hearing was held in October of 2008.
- (2) This matter was heard in the Durango Juvenile Court.
- (3) The mother was represented by Thomas Vierling. His contact information is noted above. The Department of Economic Security was represented by Assistant Attorney General Kathryn D. Cox. Her contact information now is the Maricopa County Juvenile Public Defender's Office, 3131 West Durango Street, Phoenix, Arizona 85009, 602-372-9522, dcox@mail.maricopa.gov.

Lynda Russell was the guardian ad litem. She is at the Office of the Legal Advocate, 3800 North Central Avenue, Suite 1500, Phoenix, Arizona 85012, 602-506-5379, russell@mail.maricopa.gov.

- (4) At issue was whether the mother should have visits with her son. The mother had been inconsistent in participating in services. She has three children in the custody of the state. She was having visits with her son before she had to serve about six months in jail. She requested that her son not visit her while she was incarcerated. The four-year-old child was having night terrors at his foster home. The Department of Economic Security provided an opinion of a psychologist relative to the child resuming visits.
- (5) The significance of this case was the important issue of parental visitation. A parent's rights do not cease once a child is in state custody. The law mandates parental visitation unless the child could be endangered by those visits. This was my first case dealing with that important issue.

State v. Sarah D.

- (1) This case was tried in March, 2008.
- (2) The matter was tried at the Durango Juvenile Court.
- (3) The State was represented by Jason Diekelman of the Maricopa County Attorney's Office. His contact information is 301 West Jefferson, Suite 700, Phoenix, Arizona 85003, 602-506-8532, diekelmj@mcao.maricopa.gov. The child was represented by A. Jason Max of the Juvenile Public Defender's Office. His contact information is 3131 West Durango, Phoenix, Arizona 85009, 602-372-9560, maxa@mail.maricopa.gov.
- (4) The charge was disorderly conduct with the victim being the juvenile's mother.
- (5) The significance of this case was that it was one of my first delinquency cases as a judicial officer.

In the Matter of Calvin T.

- (1) This delinquency case was tried in December, 2008 and January, 2009.
- (2) It was tried in the Durango Juvenile Court.
- (3) The State was represented by Herb Kalish of the Maricopa County Attorney's Office. His contact information is 3131 West Durango, Phoenix, Arizona 85009, 602-372-4022, kalishh@mcao.maricopa.gov. The juvenile was represented by David Katz of the Juvenile Public Defender's Office. His contact information is 3131 West Durango, Phoenix, Arizona 85009, 602-372-9560, katzd@mail.maricopa.gov.
- (4) The charges were traffic offenses for striking an unattended vehicle and not properly stopping for a stop sign.
- (5) The significance of this case was the fact that it was strongly litigated on both sides and took several settings to conclude.

31. Describe any additional professional experience you would like to bring to the Commission's attention.

I would like to bring to the Commission's attention the breadth and depth of my legal experience. I have practiced both criminal and civil law for a variety of clients. Working behind the scenes for a trial court and an appellate court has provided me a comprehensive view of the art of judging.

BUSINESS AND FINANCIAL INFORMATION

32. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question #14? No If so, give details, including dates.
33. Are you now an officer, director or majority stockholder, or otherwise engaged in the management, of any business enterprise? No If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

Is it your intention to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? Not applicable If not, give reasons.

34. Have you filed your state or federal income tax returns for all years you were legally required to file them? Yes If not, explain.
35. Have you paid all state, federal and local taxes when due? Yes If not, explain.
36. Are there currently any judgments or tax liens outstanding against you? No If so, explain.
37. Have you ever violated a court order including but not limited to an order for payment of child or spousal support? No If so, explain.
38. Have you ever been a party to a lawsuit, excluding divorce? No If so, indicate nature of lawsuit, whether you were a plaintiff or defendant, disposition of case and location of lawsuit.

39. Do you have any financial interests, investments or retainers that might conflict with the performance of your judicial duties? No If so, explain.

CONDUCT AND ETHICS

40. Have you ever been expelled, terminated, or suspended from employment, or any school or course of learning on account of plagiarism, cheating or any other "cause" that might reflect in any way on your integrity? No If so, give details.
41. Are you currently charged with or have you ever been arrested for or convicted of any felony, misdemeanor (other than a minor traffic offense), or violation of the Uniform Code of Military Justice? No If so, give details.
42. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. Not applicable
43. List and describe any litigation (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) concerning your practice of law. Not applicable
44. List and describe any litigation involving an allegation of fraud in which you were or are a defendant. Not applicable
45. List and describe any sanctions imposed upon you by any court for violation of any rule or procedure, or for any other professional impropriety. Not applicable
46. To your knowledge, has any formal charge of professional misconduct ever been filed against you by the State Bar or any other official attorney disciplinary body in any jurisdiction? No If so, when? How was it resolved?
47. Have you received a notice of formal charges, cautionary letter, private admonition or other conditional sanction from the Commission on Judicial Conduct or any other official judicial disciplinary body in any jurisdiction? No If so, in each case, state in detail the circumstances and the outcome.

48. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by Federal and State laws? No If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal law provisions.)
49. In the past year, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned or terminated by an employer as a result of your alleged consumption of alcohol, prescription drugs or illegal use of drugs? No If so, state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.
50. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended or terminated by an employer? No If so, state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the back ground and resolution of such action.
51. Have any of your current or former co-workers, subordinates, supervisors, customers or clients ever filed a complaint or accusation of misconduct against you with any regulatory or investigatory agency, or with your employer? No If so, state the date(s) of such accusation(s), the specific accusation(s) made, and the background and resolution of such action(s).
52. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? No If so, state the date you were requested to submit to such a test, type of test requested, the name of the entity requesting that you submit to the test, the outcome of your refusal and the reason why you refused to submit to such a test.
53. Within the last five years, have you failed to meet any deadline imposed by a court order or received notice that you have not complied with the substantive requirements of any business or contractual arrangement? No If so, explain in full.
54. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? No If so, explain in full.

PROFESSIONAL AND PUBLIC SERVICE
--

55. Have you published any legal or non-legal books or articles? Yes If so, list with the citations and dates.

"The Jig is Up! The Death of Gamesmanship," Arizona Attorney, March 2005 with Mr. Marc Lieberman

"Arizona Capital Sentencing at U.S. Supreme Court," Arizona Attorney, July/August 2002

Co-authored the 2000 and 2001 Capital Sentencing Guide. This was a reference manual for Arizona judges on all modern Arizona death penalty cases. It was distributed at the June 2001 judicial conference and at one time was available on the Arizona Supreme Court website.

56. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? Yes If not, explain.

57. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? Yes If so, describe.

I taught a COJET class in 2010 on legal advice and legal information at the Durango Juvenile Court. I organized and moderated a mock appellate argument on a capital case for my Inn of Court in 2010. I taught an in-house CLE to my colleagues at Lieberman, Dodge, Gerding & Anderson on civil court rules and a seminar for labor and employment professionals on the new labor regulations in the spring of 2005. At the judicial conference in 2001 I spoke on mental impairment issues in capital cases and through the Maricopa County Attorney's Office I frequently spoke to local high school students and juveniles at the Arizona Department of Juvenile Corrections on the basics of criminal law. I speak regularly to students at Montessori Academy on the judicial branch of government.

58. List memberships and activities in professional organizations, including offices held and dates.

Thurgood Marshall Inn of Court, 2003-2006; 2008-present; membership chair 2009-present

Manchester's Who's Who of Executive and Professional Registry 2005
Editor of The Defender, a publication of the Arizona Attorneys for Criminal
Justice (AACJ), 2005-06
Member, AACJ, 2005-06
Arizona Women Lawyers Association, 2003-06
Arizona Bar Association Employment and Labor Law Section, 2005-06
Arizona Bar Association Criminal Jury Instructions Committee, 1998-2000

Have you served on any committees of any bar association (local, state or
national) or have you performed any other significant service to the bar? Yes

List offices held in bar associations or on bar committees. Provide information
about any activities in connection with pro bono legal services (defined as
services to the indigent for no fee), legal related volunteer community activities or
the like.

I have just been appointed to serve as a volunteer attorney in the Arizona
Supreme Court's disciplinary panels and may also serve as a settlement officer.
This appointment is for one year and began on January 1, 2011. I also served
on the Arizona Bar Association's criminal jury instructions committee from 1998-
2000. In particular I worked with Mr. Dan Carreon on new DUI instructions. I
handled a fee dispute pro bono for the bar while in private practice and took pro
bono cases such as the Elisabeth Kawakami case noted above and a case
involving my daughters' school, Montessori Academy. I volunteered to be a
judge in the Arizona Mock Trial Competition in the state finals in May 2008.

59. Describe the nature and dates of any community or public service you have
performed that you consider relevant.

This is my second year as my daughters' Girl Scout troop leader. I run a troop of
approximately 10 girls who are brownie and junior girl scouts. I will also be in
charge of the cookie sale for the second time. I host students from Montessori
Academy in my classroom on a regular basis. I was asked to participate in the
training at the Sandra Day O'Connor law school in the Juvenile Legal Assistance
Program in October 2010.

60. List any professional or civic honors, prizes, awards or other forms of recognition
you have received.

Manchester's Who's Who of Executive and Professionals Registry

61. List any elected or appointed offices you have held and/or for which you have

been a candidate, and the dates. Not applicable

Have you been registered to vote for the last 10 years? Yes

Have you voted in all general elections held during those years? Yes If not, explain.

62. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

I enjoy travelling, hiking and spending time with my children.

HEALTH

63. Are you physically and mentally able to perform the essential duties of a judge in the court for which you are applying? Yes

ADDITIONAL INFORMATION

64. The Arizona Constitution requires that the Commission consider the diversity of the state's or county's population in making its nominations. Provide any information about yourself (your heritage, background, experience, etc.) that may be relevant to this requirement.

I am a divorced white female with children ages 10 and 11. I was born in the Buffalo, New York area and lived in Atlanta, Georgia before moving to Arizona. My cultural background is western European, primarily German. I am Roman Catholic.

65. Provide any additional information relative to your application or qualifications you would like to bring to the Commission's attention at this time.

My legal career has been rewarding. I loved the intellectual challenge of clerking and assisting judges. In practice, I was passionate about achieving justice for my clients. What I liked most about being a lawyer was being of service to others. As a judicial officer, I feel that I am using all the skills I used as a lawyer and more.

66. If you were selected by this Commission and appointed by the Governor to

serve, are you aware of any reason why you would be unable or unwilling to serve a full term? No If so, explain.

67. If selected for this position, do you intend to serve fully, including acceptance of rotation to areas outside your areas of practice or interest? Yes If not, explain.
68. Attach a brief statement explaining why you are seeking this position.
69. Attach a professional writing sample, which you personally drafted (e.g., brief or motion). The sample should be no more than a few pages in length. You may excerpt a portion of a larger document to provide the writing sample. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.
70. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than two written orders, findings or opinions (whether reported or not) which you personally drafted. The writing sample(s) should be no more than a few pages in length. You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.
71. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last two performance reviews.

LIST OF JUDGES AND COMMISSIONERS
SUPERIOR COURT OF ARIZONA IN MARICOPA
COUNTY

The Judicial Branch of Arizona, Maricopa County

Superior Court Judges



Judges are appointed through a merit process. Judicial candidates are selected for their legal ability and professional and personal achievements rather than their mastery of political campaigns.

Applicants for judicial appointment are screened by the Commission on Trial Court Appointments, a non-partisan committee. The Commission reviews all applications, interviews candidates and selects finalists whose names are forwarded to the Governor. The Governor reviews the applications, interviews each finalist and appoints one of them to the bench.

Superior Court judges in Maricopa County remain in office by the approval of voters in retention elections. There are no opponents in these elections. Voters cast a "yes" vote to retain a judge in office. A "no" vote would remove the judge from office. Every two years each judge undergoes a public review process, including a survey of the judges ability by lawyers, litigants, jurors and staff. Judges face a retention election every four years.

Judicial Officer Assignments: Judges Post-Rotation June 10, 2010

[View All](#) || [A](#) | [B](#) | [C](#) | [D](#) | [E](#) | [F](#) | [G](#) | [H](#) | [I](#) | [J](#) | [K](#) | [L](#) | [M](#) | [N](#) | [O](#) | [P](#) | [Q](#) | [R](#) | [S](#) | [T](#) | [U](#) | [V](#) | [W](#) | [XYZ](#)

Click to View Judge Biography:	Phone	Location	Profile
ABRAMS, Helene Family	602.372.3011	Southeast Facility-2D	Profile
ACETO , Mark F. Juvenile	602.506.5261	Southeast Juvenile-1080	Profile
AKERS , Linda A. Juvenile	602.506.1541	Southeast Juvenile-1077	Profile
ANDERSON, Aimee Juvenile	602.506.0055	Durango Facility-2285	Profile
ANDERSON, Arthur Criminal	602.506.0341	Central Court Building-11C	Profile
BALLINGER, Eddward Jr. Assoc. Presiding & Juvenile Presiding Judge	602.506.8551	Durango Facility-2245	Profile
BARTON, Janet Spec. Assgn. Criminal	602.506.5340	Central Court Building-8C	Profile
BASSETT, Edward Family	602.372.3003	Central Court Building-6C	Profile
BEENE, James Family	602.372.7382	Southeast Facility-4	Profile
BERGIN, Dawn Juvenile	602.372.2961	Durango Facility-3250	Profile
BLAKEY, II, A. Craig Juvenile	602.506.7806	Durango Facility-3245	Profile
BRNOVICH, Susan Criminal	602.372.2020	East Court Building-9	Profile
BRODMAN, Roger Criminal	602.372.2943	Central Court Building-13	Profile
BROTHERTON, William Family	602.372.2024	Northwest Regional Center-Suite A	Profile
BUDOFF, Robert Northeast Presiding Judge/Civil	602.506.4569	Northeast Court-K	Profile
BURKE, Edward O. Civil	602.506.6538	Old Court House-101	Profile
BUTTRICK, John A. Spec. Assgn. Civil	602.506.0971	Central Court Building-7D	Profile
CHAVEZ, Harriett Presiding Northwest/Family	602.506.4208	Northwest Regional Center-D	Profile
COHEN, Bruce Family	602.372.0686	Southeast Facility-3D	Profile
CONTES, Connie Criminal	602.506.7768	East Court Building-711	Profile
COURY, Christopher Juvenile	602.372.3876	Durango Facility-3290	Profile

DAVIS, Glenn Criminal	602.506.3135	East Court Building-513	Profile
DAVIS, Norman J. Presiding Judge	602.506.5262	Old Court House-5th Floor	Profile
DITSWORTH, John Civil	602.506.8288	Southeast Facility-2C	Profile
DONAHOE, Gary Civil	602.506.3712	East Court Building-511	Profile
DUNCAN, Sally Schneider Criminal	602.506.9042	Central Court Building-9A	Profile
FENZEL, Alfred Family	602.506.7080	Northeast Court-G	Profile
FINK, Dean M. Presiding Tax Court/Civil	602.506.3776	Old Court House-202	Profile
FLORES, Lisa Criminal	602.372.0825	East Court Building-7	Profile
FOSTER, George H. Civil	602.506.3892	East Court Building-811	Profile
GAINES, Pendleton Criminal	602.506.3940	Central Court Building-9C	Profile
GAMA, J. Richard Civil/Complex	602.506.1245	Central Court Building-701	Profile
GARCIA, Jeanne Civil	602.372.0610	Old Court House-303	Profile
GASS, David Family Court	602.372.3592	Southeast Facility-301	Profile
GATES, Pamela Family	602.506.6391	Old Court House-211	Profile
GENTRY-LEWIS, Jo Lynn Juvenile	602.372.3091	Durango Facility-3285	Profile
GERLACH, Douglas	602.372.5851	Northeast Court-H	Profile
GORDON, Michael Family	602.372.0762	Northeast Court-J	Profile
GOTTSFIELD, Robert L. Criminal	602.506.3132	East Court Building-914	Profile
GRANT, Larry Civil	602.506.5033	Southeast Facility-2F	Profile
GRANVILLE, Warren J. Associate Presiding Criminal	602.506.0434	Central Court Building-7	Profile
HANNAH, John Criminal	602.372.0759	East Court Building-613	Profile
HARRISON, Cari A. Criminal	602.506.0967	Central Court Building-12E	Profile
HAUSER, Brian R. Civil	602.506.6086	Northeast Court-E	Profile
HEGYI, Hugh Civil	602.506.3963	East Court Building-6A	Profile
HEILMAN, Joseph B. Civil	602.506.0292	East Court Building-814	Profile
HICKS, Bethany G. Juvenile	602.506.2139	Durango Facility-3280	Profile
HILLIARD, Ruth H. Family	602.506.3145	Northeast Court-D	Profile
HOAG, M. Jean Family	602.506.3130	Southeast Facility-3B	Profile
HOFFMAN, Kristin C. Criminal	602.506.5624	East Court Building-913	Profile
HYATT, Carey Presiding Family	602.506.3566	Old Court House-002	Profile
ISHIKAWA, Brian K. Assoc. Presiding Southeast Juvenile Judge	602.506.5225	Southeast Juvenile-1114	Profile
JONES, Michael D. Criminal	602.506.2030	Central Court Building-12D	Profile
KATZ, Paul A. Family	602.506.5806	Northeast Court-F	Profile
KEMP, Michael Criminal	602.372.0608	Central Court Building-8A	Profile
KILEY, Daniel Family	602.372.3839	Central Court Building-601	Profile
KLEIN, Andrew Family	602.506.4645	Central Court Building-6	Profile
KREAMER, Joseph Criminal	602.372.1764	East Court Building-614	Profile
LECLAIRE, Thomas Family Court	602.372.3849	East Court Building-911	Profile
LEE, Raymond Juvenile	602.506.3652	Southeast Juvenile-1090	Profile

MAHONEY, Margaret R. Juvenile	602.506.0387	Durango Facility-3295	Profile
MANGUM, J. Kenneth Civil	602.506.4567	East Court Building-514	Profile
MARTIN, Daniel Criminal	602.372.2925	East Court Building-712	Profile
MCCLENNEN, Crane LCA	602.506.3901	Central Court Building-4	Profile
MCCOY, Scott Family	602.372.3603	Central Court Building-6	Profile
MCMURDIE, Paul Special Assignment	602.372.0765	East Court Building-413	Profile
MCNALLY, Colleen Juvenile	602.506.5961	Durango Facility-2280	Profile
MCVEY, Michael R. Civil	602.506.3167	Northeast Court-L	Profile
MILES, Linda H. Civil	602.506.6452	Northeast Court-I	Profile
MILES, Robert Family	602.372.0754	Old Court House-201	Profile
MROZ, Rosa Presiding Probate/Mental Health	602.372.0384	Old Court House-102	Profile
MYERS, Sam Spec. Assgn. Civil	602.372.2940	Central Court Building-7	Profile
NORRIS, Benjamin Juvenile	602.372.3582	Durango Facility-2290	Profile
O'CONNOR, Karen L. Criminal	602.506.0428	Central Court Building-11E	Profile
OBERBILLIG, Robert Presiding Civil	602.506.2194	Old Court House-309	Profile
PADILLA, Jose Family	602.372.0901	Northwest Regional Center-B	Profile
PALMER, David Family	602.372.3980	Central Court Building-6B	Profile
PINEDA, Susanna Criminal	602.372.2958	East Court Building-714	Profile
POTTS, Karen Civil	602.372.1160	Southeast Facility-2G	Profile
RAYES, Douglas Criminal Presiding	602.506.0816	East Court Building-411	Profile
REA, John Civil	602.372.0382	East Court Building-414	Profile
REINSTEIN, Peter Family	602.506.6368	Central Court Building-6	Profile
RONAN, Emmet J. Civil	602.506.0438	Southeast Facility-2E	Profile
RYAN, Timothy J. Family	602.372.3081	Southeast Facility-4B	Profile
SANDERS, Teresa A. Family	602.506.4791	Southeast Facility-4A	Profile
STEINLE, III, Roland J. Special Assignment/Criminal	602.506.7893	Central Court Building-4C	Profile
STEPHENS, Sherry K. Criminal	602.506.4818	East Court Building-412	Profile
TALAMANTE, David M. SE Presiding/Family	602.506.6251	Southeast Facility-4	Profile
THOMPSON, Peter Juvenile	602.372.3579	Southeast Juvenile-1064	Profile
THUMMA, Samuel A. Criminal	602.372.2018	Central Court Building-13E	Profile
UDALL, David K. Juvenile	602.506.5514	Southeast Juvenile-1093	Profile
VERDIN, Maria del Mar Criminal	602.506.2603	Central Court Building-11A	Profile
WARNER, Randall Criminal	602.372.2966	East Court Building-512	Profile
WELTY, Joseph C. Criminal	602.372.2537	Central Court Building-12A	Profile
WHITTEN, Christopher Criminal	602.372.1164	Central Court Building-8D	Profile
WILLETT, Eileen Civil	602.506.3343	Central Court Building-4	Profile

[return to top](#)

The Judicial Branch of Arizona, Maricopa County

Superior Court Commissioners



Commissioners are appointed by the Court's Presiding Judge from attorneys who apply and are recommended by a selection committee made up of judges, lawyers and others. Commissioners handle specific assigned cases and uncontested matters.

Judicial Officer Assignments: Commissioners as of June 10, 2010

[View All](#) || [A](#) | [B](#) | [C](#) | [D](#) | [E](#) | [F](#) | [G](#) | [H](#) | [I](#) | [J](#) | [K](#) | [L](#) | [M](#) | [N](#) | [O](#) | [P](#) | [Q](#) | [R](#) | [S](#) | [T](#) | [U](#) | [V](#) | [W](#) | [XYZ](#)

Click to View Commissioner Biography:

	Phone	Location
ABE, Alysson Family	602.506.1190	Southeast Facility-4D
ALBRECHT, Richard Family Court	602.506.7822	Northeast Court-A
ARNOLD, Patricia Family	602.372.3021	Central Court Building-5D
BAILEY, Cynthia Criminal	602.506.4527	Central Court Building-LL 4
BARTH, Michael Probate/Civil	602.506.3857	Old Court House-005
BENNY, Margaret Criminal	602.506.1117	Southeast Facility-2A
BERNSTEIN, Jerry Criminal	602.506.0616	Southeast Facility-2B
BLOMO, James T. Criminal	602.506.0039	East Court Building-6
BODOW, Keelan Criminal	602.506.4572	East Court Building-LL
BRAIN, Mark Juvenile	602.506.6081	Durango Facility-2295
BRAME, Veronica Mental Health	602.506.0959	Central Court Building-13D
CLARKE, Terri	602.506.2040	Southeast Juvenile-1105
CUNANAN, David O. Probate/Civil	602.506.3381	Old Court House-205
DAVIS, Jay Civil	602.372.2403	Old Court House-001
DONOFRIO III, Charles Criminal	602.876.8200	4th Ave. Jail
FRENCH, Colleen L. Criminal	602.372.0967	Central Court Building-5
GARFINKEL, Monica Criminal	602.876.8200	4th Ave. Jail
GIALKETSIS, Cynthia Probate/Civil	602.372.0756	Old Court House-301
HAMNER, Barbara Criminal	602.876.8200	4th Ave. Jail
HARRIS, Myra Family	602.506.4067	Central Court Building-3A- rm 301
HARTSELL, Roger Family Court	602.506.4067	Central Court Building-301
HINTZE, Michael Mental Health	480.344.2006	Desert Vista
HOLDING, Steven Civil	602.372.0969	Central Court Building-13
HOLGUIN, Jaime Criminal	602.372.0740	Central Court Building-Lower Level
IRELAND, Jacki Civil/Probate/Family	602.506.3809	Northwest Regional Center-C
JOHNSON JR, Frank Juvenile	602.372.3135	Durango Facility-2250

KAPIO, Thomas Juvenile	602.506.0949	Southeast Juvenile-Room -- 1st Floor
KAISER, Brian Criminal	602.876.8200	4th Ave. Jail
KONGABLE, Kirby Civil/Probate	602.506.3915	Southeast Facility-3C
KUPISZEWSKI, Stephen Special Assignment	602.372.7878	Northeast Court
LOPEZ, Julia Criminal	602.876.8200	4th Ave. Jail
LYNCH, Steven Criminal	602.372.0001	Central Court Building-10
MADDEN, Sheila A. Family	602.506.3366	Central Court Building-5
MCGUIRE, J. Justin Family	602.506.0862	Central Court Building-5F
MEAD, Kathleen Criminal	602.372.1878	Central Court Building-LL 002
MENDEZ, Mina Family	602.506.7860	Northeast Court-B
MILLER, Phemonia Criminal	602.506.4185	Central Court Building-8B
MORROW, James Criminal	602.372.3192	East Court Building-812
MULLENEAUX, Christine Criminal	602.506.1767	4th Ave. Jail
NEWCOMB, Casey Family	602.372.2490	Central Court Building-5C
NEWELL, Julie Criminal	602.506.3151	Central Court Building-9B
NOTHWEHR, Richard L. (Rick) Civil/Probate	602.372.0270	Old Court House-106
OWENS, Bernard C. Juvenile	602.372.0268	Southeast Juvenile-1103
PASSAMONTE, Carolyn K. Criminal	602.372.0555	One West Madison-Courtroom #1
PORTER, Gerald Civil	602.372.3131	Northeast Court-C
REES, Brian Criminal	602.506.0059	East Court Building-813
RICHTER, Virginia Criminal	602.506.1746	East Court Building-LL012
ROBERTS, Lisa M. Criminal	602.372.2017	Central Court Building-1002
RUETER, Jeffrey Criminal	602.506.5349	4th Ave. Jail
RUMMAGE, James Criminal	602.372.0987	Central Court Building-10th Fl.
SINCLAIR, Joan Juvenile	602.372.4553	Durango Facility-2250
SMITH, Shellie Criminal	602.372.3593	Central Court Building-11D
SPENCER, Barbara L. Criminal	602.372.4516	Central Court Building-10E
SVOBODA, Pamela Criminal	602.372.0986	One West Madison-Courtroom #2
VANDENBERG, Lisa Ann Criminal	602.506.0129	One West Madison-Courtroom #3
VATZ, Benjamin Civil	602.506.5978	Old Court House-001
WASHINGTON, Eartha K. Family/LCA	602.372.0576	Central Court Building-3rd Floor
WHITE, Susan Criminal	602.876.8200	4th Ave. Jail
WOODBURN, R. Jeffrey Family	602.506.4203	Southeast Facility-3E
SCHADE, George State Water Master	602.372.4115	Central Court Building-5B

[return to top](#)

**BRIEF STATEMENT EXPLAINING WHY I AM
SEEKING THIS POSITION**

I am drawn to public service. I learned while practicing law in a variety of settings that what I enjoy most about law is helping others. I want to be able to serve the people of Maricopa County on any calendar. As a Commissioner, I am more limited in my assignments.

The intellectual challenge of becoming a judge appeals to me. I like researching legal issues and drafting rulings. I appreciate thoroughly researched pleadings and look forward to substantive arguments from counsel. I would like to handle jury trials and more of the serious issues that come in to the superior court.

I thought about becoming a judge as far back as law school. While practicing, I was always able to see opposing counsel's point of view. It seemed like a natural progression to me to become a judicial officer. I have an even temperament, a great deal of patience, a sense of humor and considerable compassion for the human condition. I believe I can put these attributes to good use as a judge.

PROFESSIONAL WRITING SAMPLE

When a Defendant Refuses to Submit to an Examination by the State's Expert

Evidence regarding a defendant's mental health is often introduced at aggravation/mitigation hearings in capital cases. Occasionally, a capital defendant will be examined by his own expert and desire to submit this expert testimony in mitigation, but then on advice of counsel, will refuse to submit to an examination by the state's expert. This raises several issues: does ordering a person to submit to a mental health examination violate that person's 5th and 6th Amendment rights? Does precluding the defendant's mental health evidence violate the dictates of *Lockett v. Ohio*? There is no case law in Arizona that directly answers those questions. However, several other states and some federal courts have grappled with this issue. Arizona itself has some procedural rules and case law that impact it. The following is a discussion of the general concerns raised by this situation and the applicable law pertaining to it.

A brief review of the federal history on this subject is instructive. *Estelle v. Smith*, 451 U.S. 454 (1981), held that a defendant's 5th and 6th Amendment rights were violated where the state introduced psychiatric testimony on the issue of future dangerousness. The defendant was examined for competency prior to trial on court order. He never introduced any mental health testimony at trial or during the penalty phase of his capital case. The United States Supreme Court found that the defendant's 5th Amendment privilege against compelled self-incrimination was violated because he was not informed prior to the examination that he had a right to remain silent and that anything he said could be used against him in a capital sentencing proceeding. The defendant's 6th Amendment right to counsel was also violated because his right to the assistance of counsel had already attached when the psychiatrist examined him in the jail, and he was not allowed the assistance of counsel in making a decision regarding the examination. The *Estelle* Court left open the possibility that a defendant who wanted to introduce psychiatric evidence in his own behalf could be precluded from doing so unless he was also willing to be examined by a state expert. *Estelle, id.* at 472.

In *Buchanan v. Kentucky*, 483 U.S. 402 (1987), the United States Supreme Court held that where a defendant presents psychiatric evidence, at the very least, the prosecution may rebut this evidence from the reports of the defense expert. *Estelle* was distinguished because here the defendant proffered mental health evidence. The defendant requested the examination with the expert, and submitted evidence of a mental status defense at trial through a social worker. The defendant's 5th Amendment rights were not violated when the prosecution then elicited additional information from the expert's report also from the social worker. The privilege was waived when the mental status defense was raised.

A refusal situation occurred in a federal capital case from Virginia. *United States v. Beckford*, 962 F.Supp. 748 (E.D.Va. 1997). There are federal rules of criminal procedure that require notice of the intent to introduce expert testimony regarding a

mental condition bearing on the issue of guilt. The federal rules allow the court to order an examination of the defendant on the government's motion, and preclude the use of any evidence derived from that examination until the defendant introduces testimony on the issue. FED. R. CRIM. P. 12.2. If the defendant fails to give notice or submit to the examination, the court may exclude the defense expert's testimony. The rules are silent if this situation occurs in the penalty phase of a capital prosecution.

The defendant argued in *Beckford* that the rules require no notice at the penalty phase, and the government can adequately rebut any such evidence by the review of the defense expert's report. The defendant further argued that ordering an examination infringed on his 5th and 6th Amendment rights.

The district court held that it has the inherent power to order notice, examination and discovery of mental health conditions in the death penalty phase of a federal prosecution based on the following reasoning. The scope of mitigation is broad, and can only be curtailed under limited circumstances in accordance with the Eighth Amendment under *Lockett v. Ohio*, 438 U.S. 586 (1978). Certainly a defendant may introduce mental health evidence in mitigation. The federal death penalty statute indicates that the "government shall be permitted to rebut any information received at the hearing." The *Beckford* Court found that this right of rebuttal, considered in conjunction with provisions allowing mitigation evidence based solely on mental condition, indicates that at a minimum the government must have access to the reports prepared by the defendant's mental health experts and notice of intent to rely on such at the penalty phase.

The *Beckford* Court further found that such notice and access to reports would not alone be sufficient to provide meaningful rebuttal to the government. To hold otherwise would "ignore the reality that the key to any effective rebuttal of a mental health defense depends on examination of the defendant." *Beckford, id.* at 758. Because the basic tool of psychiatry is the personal interview and psychiatry is not an exact science, meaningful rebuttal must include notice, discovery and examination of the defendant.

The *Beckford* Court determined that where a decision not to submit to an examination by the state's expert is made on advice of counsel there is clearly no 6th Amendment infringement. The protection of the 5th Amendment also ceases when the defendant indicates that he intends to use mental health evidence himself. The *Beckford* Court distinguished *Estelle*, because there the defendant never introduced any mental health evidence before the expert testimony was admitted against him. Here, the defendant intended to introduce mental health evidence and has placed his mental health in issue. Doing so strips the defendant of his 5th Amendment privilege against the introduction of mental health evidence by the prosecution. *See Buchanan, id.*

Other states have a variety of rules concerning this issue. There is a proposed rule change in Florida wherein if the capital defendant intends to introduce mental health expert testimony in mitigation, the court shall order an examination by the state's expert. If there is a refusal, the court shall either order the defendant to allow review of the defense expert's tests, reports and evaluations, or prohibit the defense expert from

testifying. Amendments to Florida Rule of Criminal Procedure 3.220—Discovery, 654 So.2d 915 (1995). The Supreme Court of California in *People v. Carpenter*, 935 P.2d 708 (1997), held that by tendering his mental condition in the penalty phase of a capital case the defendant has waived his 5th and 6th Amendment rights to the extent necessary to permit a proper examination. Refusal to cooperate could be considered by the jury in its determination of the sentence. In Texas, the “essential” principles of waiver and parity dictate that if a defendant “breaks his silence to speak to his own psychiatric expert and introduces that testimony which is based on such interview, he has constructively taken the stand and waived his fifth amendment right to refuse to submit to the State’s psychiatric experts.” *Chamberlain v. Texas*, 998 S.W.2d 230, 234 (1999). The Supreme Court of Georgia, in a recent death penalty case, reiterated the reasoning behind Georgia’s rule that if the defendant intends to introduce expert mental health testimony in the sentencing phase of a capital case, he must submit to an examination by a state expert. In *Nance v. State*, 526 S.E.2d 560 (2000), the Supreme Court of Georgia indicated that the rule tries to strike a fair balance between the state’s interest, the court’s truth-finding function, and the defendant’s privilege against self-incrimination. If there is a refusal, the trial court may preclude the defense expert from testifying. The purpose of the rule is to permit the state the ability to rebut the testimony of the defense’s mental health expert.

As noted above, Arizona does not have a rule or case specific to this particular situation. However, Arizona does have some law pertaining to the issue. The rules of discovery in capital cases specifically require the disclosure of mental health experts by both sides in addition to the release of those experts’ reports under Rule 15 of the Rules of Criminal Procedure. If the expert is to be called in rebuttal, the same rule applies. Therefore, Arizona already has notice and discovery requirements regarding mental health experts in aggravation/mitigation hearings. Additionally, Rule 11 of the Rules of Criminal Procedure allows a trial court in Arizona to order an examination of the defendant to determine competency to stand trial or to investigate the defendant’s mental condition at the time of the offense. Rule 26.5 of the Rules of Criminal Procedure allows a trial judge to order a diagnostic evaluation or mental health evaluation at any time prior to sentence being pronounced.

At an aggravation/mitigation hearing, A.R.S. §13-703C states that the “prosecution and the defendant shall be permitted to rebut any information received at the hearing.” Under A.R.S. §13-703(G)(1) the capital defendant may introduce evidence of his mental health. Applying the logic of *Beckford*, if there is to be any meaningful rebuttal of mental health testimony at the aggravation/mitigation hearing, the state must be allowed to have its own expert examine the defendant, or at a minimum, the court should consider this refusal in weighing the defense mental health evidence. The trial court could preclude the introduction of the defense mental health testimony based on this same analysis if the defendant refuses to submit to an examination by the state’s expert.

The Arizona Supreme Court in *State v. Schackart*, 175 Ariz. 494, 858 P.2d 639 (1993), faced a situation where the defendant intended to call a mental health expert to testify regarding his mental state at the time of the killing. One of the defenses at trial

was the lack of intent to kill. The state moved to have the defendant examined by one of its experts under Rule 11, and the trial court denied this motion. The state then filed a special action, and the Court of Appeals reversed the trial court. *State v. Druke (Schackart)*, 143 Ariz. 314, 693 P.2d 969 (1984). The trial court then ordered the defendant to be examined by a state expert.

The reasoning of the Court of Appeals was expansive and referred to the broad discretion of the trial court. The *Druke* Court determined that Rule 11 was not limited to cases where the defendant invoked the insanity defense, but applied to permit examinations to investigate the defendant's mental status at the time of the offense. *Druke, id.* at 317, 693 P.2d at 972. A "defendant is not entitled to an unfair advantage in the presentation of his defense and conversely, ... the state is entitled to a fair opportunity to present its evidence and to rebut the evidence presented by the defendant." *Druke, id.* at 318, 693 P.2d at 973. To deny the state the right to have its own expert examine the defendant would rob the state of its reciprocal right of discovery.

Schackart argued that ordering him to submit to an evaluation by the state's expert violated his privilege against self-incrimination. The *Schackart* Court held that a defendant who places his or her mental condition in issue has "opened the door" to an examination by an expert appointed by the court on motion of the state. Analogizing to the situation where the defendant elects to testify at trial and then attempts to invoke the right to self-incrimination to avoid cross-examination, the *Schackart* Court found that to "hold otherwise would deprive the state of the only adequate means to contest the conclusions of a defense psychiatric expert." Although the *Schackart* Court was confronted with a refusal situation in a capital trial, the analysis also applies at an aggravation/mitigation hearing.

The *Schackart* Court also addressed the issue of whether the defendant has a right to have his counsel present during the court-ordered examination. The Arizona Supreme Court found that the defendant has no such constitutional right. The presence of counsel is not required to ensure the defendant's right to a fair trial, and it may actually hinder the expert's examination. If a defendant wishes to challenge the manner of the examination or the conclusions, this can be done on cross-examination or through the testimony of his own witness.

In *State v. Clabourne (Clabourne I)*, 142 Ariz. 335, 690 P.2d 54 (1984), the defendant was examined by two psychiatrists before trial to determine if he was competent to stand trial. Prior to sentencing, the defendant requested that the trial court order a Rule 26.5 evaluation. He claimed that he had become depressed after trial and that he was not competent to be sentenced. He also contended that further examinations would present mitigating evidence. The trial court denied both requests. The Arizona Supreme Court upheld that decision as not being an abuse of discretion given that psychiatrists had already examined the defendant and testified regarding his mental status. The *Clabourne* Court reiterated that Rule 11 requires such an examination if reasonable grounds exist for a competency examination, and Rule 26.5 gives the trial court the power to order an examination if it "feels it needs additional information to

determine whether this mitigating factor [(G)(1)] exists.” The Arizona Supreme Court noted that Rule 26.5 uses the word “may,” and emphasized that the decision is within the trial judge’s discretion.

In *State v. Mauro (Mauro II)*, 159 Ariz. 186, 766 P.2d 59 (1988), the defendant argued that his constitutional rights were violated when the trial court ordered an examination under Rule 11. The defendant put forth an insanity defense. The defendant requested the presence of his attorney at this examination. The state’s expert was allowed to testify at trial that the defendant’s request for counsel was evidence of the defendant’s sanity. The *Mauro* Court found that there was no 6th Amendment violation because the trial court allowed the defense attorney to be present for the examination. The Court found the 5th Amendment protections of *Estelle* inapplicable because the defendant was examined at his own request and this was a clear waiver of constitutional guarantees. The defendant’s refusal to see the state psychiatrist without his attorney was evidence that the defendant would not cooperate with the state expert, and was not an impermissible comment on his right to remain silent. Rather, it was a permissible use by the state of evidence rebutting the defendant’s expert testimony of insanity. It was not the content of the defendant’s statements that was important. It was the defendant’s conduct, namely his refusal to cooperate, which the state expert took into consideration when forming his opinion regarding the defendant’s sanity.

What are the trial court’s options? While the Arizona Supreme Court has not directly addressed the issue of a refusal at an aggravation/mitigation hearing, it has addressed similar issues in trials of capital cases. The Court has emphasized the trial judge’s discretion to order examinations under Rules 11 and 26.5 of the Rules of Criminal Procedure, and the Court of Appeals has noted the right to meaningful rebuttal under the discovery rules. A trial court could order the defendant to undergo a mental health examination by the state’s expert and, if that order is not complied with, preclude the introduction of the defense expert testimony. The trial judge could also stop short of preclusion and simply give the defense testimony less weight given the limited ability of the prosecution to effectively rebut it. If the evidence pertains to a different issue, i.e. dysfunctional childhood, the trial court could admit the evidence and consider it in that context only. *Schackart* makes clear that defense counsel has no right to be present at any such examination, and *Mauro* indicates that evidence of a refusal may be considered as evidence of sanity. The best option in any given case will surely depend on the particular facts and issues involved.

Joan Huls
July, 2000

TWO WRITTEN ORDERS

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

JD [REDACTED]

5/18/2010

JUDGE PRO TEM JOAN SINCLAIR

CLERK OF THE COURT
A. Chee
Deputy

IN THE MATTER OF:

M. [REDACTED] & D. [REDACTED]

AIMEE D YOUNGBLOOD

DOB: [REDACTED]
K. [REDACTED] & L. [REDACTED]

DOB: [REDACTED]

DEANNA B SANDLER

MARY LOUISE VERDIER

LON S TAUBMAN

FOSTER CARE REVIEW BOARD
DES CASEWORKER SECTION 20

SEVERANCE RULING

The Department of Economic Security/Child Protective Services Division ("the Department") filed a Motion for Termination of Parent-Child Relationship on December 1, 2009. The father of the children is [REDACTED] ("Father"). The mother of the children is [REDACTED] ("Mother"). Mother is deceased. Father contested the severance of his rights and a hearing was set in this Court on May 11, 2010.

The Court heard testimony from Father and the Child Protective Services ("CPS") case manager [REDACTED]. The following exhibits were admitted into evidence at the hearing: Exhibit 1-the CPS report dated 7/13/09; Exhibit 2-the CPS report dated 11/9/09; Exhibit 3-records from the Child Help Children's Center dated 3/31/09 regarding M. [REDACTED]; Exhibit 4-criminal records from Mexico translated into English; Exhibit 5-a handwritten letter in

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

JD [REDACTED]

5/18/2010

Spanish from [REDACTED] dated 5/5/10 and a typewritten translation in English; Exhibit 6-a handwritten letter in Spanish from [REDACTED] dated 5/7/10 and a typewritten translation in English; and Exhibit 7-a handwritten letter in Spanish from [REDACTED] dated 5/5/10. During the hearing, the court interpreter read Exhibit 7 and translated it into English.

The Court listened carefully to the testimony in this case and reviewed all the exhibits. The Court took this matter under advisement at the conclusion of the hearing on May 11, 2010. This is the Court's ruling.

The Allegations

The Department alleges that Father willfully abused the children or failed to protect the children from willful abuse so as to create a substantial risk of harm to the children's health or welfare under A.R.S. §§ 8-201(2) and 8-533(B)(2). The Department also alleges that Father is deprived of his civil liberties due to the conviction of a felony and Father's sentence is of such length that the children will be deprived of a normal home for years under A.R.S. § 8-533(B)(4). The Department further alleges that it is in the best interests of the children to sever Father's parental rights to provide the children with stability and permanency. The children are currently living with the maternal grandparents who wish to adopt them.

Legal Standards

Before the juvenile court can terminate a parent's rights, it must find by clear and convincing evidence that at least one statutory ground for termination exists. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284 ¶ 22, 110 P.3d 1013, 1018 (2005) ("*Kent K.*"). The juvenile court must determine that termination is in the child's best interests by a preponderance of the evidence. *Kent K.*, *id.* at 284 ¶ 22, 110 P.3d at 1018. This is shown by credible evidence that the child would benefit from the severance or be harmed by the continuation of the relationship. *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, 587 ¶ 8, 177 P.3d 327, 329 (App. 2008).

Under A.R.S. § 8-533 (B)(4), a court must consider all relevant factors relative to a parent's sentence including: "(1) the length and strength of any parent-child relationship existing when incarceration begins, (2) the degree to which the parent-child relationship can be continued and nurtured during the incarceration, (3) the age of the child and the relationship between the child's age and the likelihood that incarceration will deprive the child of a normal home, (4) the length of the sentence, (5) the availability of another parent to provide a normal home life, and

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

JD [REDACTED]

5/18/2010

(6) the effect of the deprivation of a parental presence on the child at issue.” *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, 251-52 ¶ 29, 995 P.2d 682, 687-88 (2000).

The Testimony

Father testified from prison in Mexico with the assistance of the court interpreter. He stated that he was in prison for murdering his wife, the mother of the children. He was sentenced the day prior to 30 years in prison. He is seeking an appeal of his sentence. That process can take about 3 months. If his appeal is successful, he will still be incarcerated for about 7 years. He already appealed his conviction and it was upheld. Father asked the Court not to terminate his parental rights because he will take care of his children and take responsibility for them.

The Court admitted Exhibit 7 which was then translated by the court interpreter and read into the record. The letter from [REDACTED] stated that the author had a lot of contact with Father and Mother. Father was a good father and very responsible. Father treated the girls well. He would take the oldest child to kindergarten before work and on the weekends they would all visit with the paternal grandparents. The girls were loved and cared for.

CPS case manager [REDACTED] testified that the children came in to care in July, 2009. They both lived in Maricopa County, Arizona at the time of the filing of the petition. The children are currently receiving services. The older child was present to some extent during the homicide. The children are adoptable and the maternal grandparents wish to adopt the children. The oldest child is afraid of Father given the information from the counseling notes. She has been diagnosed with post traumatic stress disorder.

Analysis

The criminal records from Mexico paint a chilling picture of repeated domestic violence perpetrated by Father upon Mother culminating in Father’s murder of Mother in December, 2008. According to those records, Father repeatedly beat Mother. On December 21, 2008, Father, Mother and the children were visiting relatives and Father was drinking. Later that evening, the family returned home and Father began beating Mother. The oldest child, [REDACTED] reported seeing Father strangling Mother while Mother called out to the child. [REDACTED] was 5 years old at this time. Her younger sister was present for the fighting and screamed out “Mom” while Father was assaulting Mother. At some point, Father locked the children in another room. [REDACTED] saw Father carrying Mother outside the house, apparently to a car. Father was covered in blood. He told the child Mother was sleeping. He told the child Mother had hit him in the nose and that was why he was covered in blood. The child saw no injury to Father’s nose.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

JD [REDACTED]

5/18/2010

Father took the children to the paternal grandparents' house and told relatives and friends that Mother had left. Worried relatives searched a number of houses and locations looking for Mother. Father ultimately confessed to killing Mother and told authorities where he dumped her body. Mother's body was found and autopsied. She had been stabbed four times in the neck and died from blood loss. Father was convicted of the homicide of Mother. [REDACTED] told the Mexican authorities that she saw Father hit Mother before and that Father had hit her also.

The records from Child Help indicate that [REDACTED] has been diagnosed with post traumatic stress disorder from witnessing domestic violence and Father killing Mother. The child is extremely fearful.

The Department has proven both grounds for severance of Father's rights by clear and convincing evidence. Father abused the children by killing their mother with the children present for part of the offense. He has not only taken their mother from them, but left the older child with significant emotional trauma from that event. That is an injury to the child that may take years to overcome if she is able to overcome it at all.

The younger child, while perhaps too young to have any direct memory of this horrific event, will live the rest of her life without a mother and knowing that her father was responsible for that. Both of these children have been horrendously damaged by Father's actions.

Even without a diagnosis of emotional trauma for the younger child, the Court believes that she suffered emotional trauma during the killing of Mother by Father. Her older sister stated to the Mexican authorities that the younger child cried out for her mother during the assault. Nevertheless, parents "who abuse or neglect their children, or who permit another person to abuse or neglect their children, can have their parental rights to their other children terminated even though there is no evidence that the other children were abused or neglected." *Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, 79, ¶ 14, 117 P.3d 795, 798 (App. 2005).

Father will be in prison in Mexico for approximately 30 years. Even if his appeal is successful, he will be incarcerated for about 7 years. Because he killed Mother, he has left these children with no parent to raise them. Despite Father's protestations to the contrary, he cannot adequately parent his children from prison in another country. His oldest daughter is afraid of him with good reason. At best, these children will be deprived of a normal home for a period of years due to Father's sentence. Given that Father was in the habit of beating Mother routinely while the family was intact, and the oldest child told the Mexican authorities that she witnessed this domestic violence and stated that Father hit her as well, the Court finds that the parent-child relationship that existed between Father and the children was clearly not ideal and there is no good reason to continue and nurture that relationship.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

JD [REDACTED]

5/18/2010

It is in the best interests of the children that Father's parental rights to them be severed. They are quite young and adoptable. They are currently placed with the maternal grandparents who intend to adopt them. The Department indicated that if adoption is not possible, a guardianship with the maternal grandparents would be pursued. These children deserve permanency and stability. That will be achieved by severing Father's rights.

Conclusion

The Department has met its burden of proof relative to the grounds for termination and the best interests finding. The Court therefore terminates the parental rights between Father [REDACTED], and the children, [REDACTED] and [REDACTED].

Custody of the children remains with the Department. The Department has the authority to consent to the adoption of these children when appropriate. All parties are advised to their right to appeal by filing a Notice of Appeal within 15 days of this order. The rules and procedures for doing so are set forth in Rules 88-93 of the Rules of Procedure for the Juvenile Court. After the appeal time has run, counsel for Father is relieved from further representation of Father in this matter.

ppd: 5/18/2010

5/18/2010
DATE

/ s / JUDGE PRO TEM JOAN SINCLAIR
JUDGE PRO TEM JOAN SINCLAIR

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

JD [REDACTED]

9/24/2010

JUDGE PRO TEM JOAN SINCLAIR

CLERK OF THE COURT
S. Draper
Deputy

IN THE MATTER OF:

JA [REDACTED] T [REDACTED]
[REDACTED]
DOB: [REDACTED]

LESLIE R HATFIELD

DEANNA B SANDLER

L ASHLEY ROSS

JUSTINE R JIMMIE

FOSTER CARE REVIEW BOARD
CASA
DES CASEWORKER SECTION 09

UNDER ADVISEMENT RULING – SEVERANCE GRANTED

Introduction

This matter was set for a contested severance hearing on July 6, 2010, July 13, 2010 and August 13, 2010. At the conclusion of the hearing on August 13, 2010 the Court took this matter under advisement. The Court reviewed and considered all the exhibits and testimony in this case. Exhibits 1 through 19 were admitted into evidence. This is the Court's ruling in this matter.

Biographical Findings

The following child is the subject of the motion to terminate parental rights: J [REDACTED]
[REDACTED] T [REDACTED] born [REDACTED] in Maricopa County, Arizona. The mother of this child is
[REDACTED] ("Mother") and the father of this child is [REDACTED] ("Father").

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

JD [REDACTED]

9/24/2010

Jurisdiction

This child currently lives in Maricopa County, Arizona. She is currently in the legal custody of the Arizona Department of Economic Security/Child Protective Services Division ("the Department" or "CPS") under court orders in JD [REDACTED]. This Court has jurisdiction of this matter under A.R.S. § 8-532(A). This child has been in the legal custody of the Department since October 30, 2009.

Allegations

The Department filed its Motion for Termination of Parent-Child Relationship on January 15, 2010. The Department alleges that both parents' rights should be terminated based on neglect and willful abuse. The Department states that both parents neglected this child or failed to protect this child from neglect so as to cause an unreasonable risk of harm to the child's health or welfare. A.R.S. §§ 8-201(21); 8-533(B)(2). The Department also states that both parents willfully abused this child or failed to protect this child from willful abuse so as to cause a substantial risk of harm to the child's health or welfare. A.R.S. §§ 8-201(2); 8-533(B)(2).

Testimony of Mother

Mother testified that she works at the airport from 7:30 am to 3:30 pm. While she worked, Father would watch J [REDACTED]. The child did not attend daycare or preschool. She is now [REDACTED] years old. On October 6, 2009 the parents sent the child to her room so they could have some time alone. This was a normal part of the child's routine. She would play by herself in her room for 30-45 minutes at a time. That day, they saw J [REDACTED] in her room and she was crying. Mother stated that the child told her that she had fallen on her bed. The child put her hand to her vaginal area to show where she was hurt. Mother looked in this area and saw bleeding and suggested they take the child to the hospital. The child stated that she had been hurt by the bed railing.

At some point at the hospital, Mother became aware that the police had been called. Mother understood that there were concerns about sexual misconduct involving the child. Mother did not see any bruising on the child's inner thighs; she only saw the blood in the child's vaginal area. Mother was interviewed by the police. She did not take a polygraph examination at that time. The child was taken to Child Help for an interview. Mother spoke with someone she thought was a nurse who informed her that the parents' story did not match the child's injury. It did not occur to Mother that the child could have been sexually abused.

Mother agreed that children have a right to be free from abuse. While she loves her husband, Mother testified that she would not protect him. Mother stated that neither she nor her

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

JD [REDACTED]

9/24/2010

Legal Findings-Mother and Father

Before the juvenile court can terminate a parent's rights, it must find by clear and convincing evidence that at least one statutory ground for termination exists. *Kent K. v. Bobby M.*, 210 Ariz. 279, 284 ¶ 22, 110 P.3d 1013, 1018 (2005) ("*Kent K.*"). The Department argues that both Mother's and Father's parental rights should be terminated based on neglect and willful abuse.

Neglect is defined as "the inability or unwillingness of a parent...to provide [a] child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." A.R.S. §8-201(22). Abuse is defined as "the infliction or allowing of physical injury, impairment of bodily function or disfigurement...caused by the acts or omissions of an individual having care, custody and control of a child." A.R.S. § 8-201(2). Subsection a of this statute specifically includes "inflicting or allowing sexual abuse...sexual conduct with a minor...sexual assault...molestation of a child..."

The Court finds that the Department has not met its burden of proof on the neglect ground. The evidence is clear that the apartment where the child, Mother and Father lived was infested with cockroaches. While Mother and Father both testified that they tried to deal with this situation by contacting the apartment manager to spray, spraying for bugs themselves and ultimately moving to a new apartment, the fact remains that when the child was taken into care cockroaches were all over the apartment including on the child's bed and in the refrigerator. The Court finds it credible that the child reported that cockroaches were on her bed and even in her mouth when she was sleeping. The Court notes that there was a prior CPS referral for similar issues and the child had been living with her uncle for several months on a previous occasion because her parents' apartment was not clean.

What was lacking here was any evidence to support that this neglect caused an unreasonable risk of harm to the child's health or welfare. The Court heard no evidence of any kind linking the condition of the apartment and the close proximity of the child to the cockroaches to a health hazard for this child. While it certainly distasteful that the child lived in this environment, the Court will not assume that the presence of the cockroaches alone, without more, supports a finding that the child's health or welfare was unreasonably at risk solely on that basis. The Department has not met its burden on the ground of neglect.

The Court does find that the Department has met its burden on the abuse ground. The child stated that her parents touched or bit her on her "pee-pee." She told the doctor at the hospital that her father touched her that day. She reported to her caregivers that her mother touched her in her "pee-pee" with a purple dog or purple dog tail when she was bad. She

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

JD [REDACTED]

9/24/2010

exhibited sexualized behaviors in her uncle's home by touching a woman's breasts, kissing her dolls with an open mouth, and sitting on people's laps and "grinding." She was comfortable lying down with her legs spread and someone touching her in her vaginal area. Her physical examination by Ms. [REDACTED] was significant in that it revealed more than one area of injury. Ms. [REDACTED] described these as well protected areas and areas that the child would not explore because doing so would be painful for the child. The parents' story about how the child received these injuries is simply not supported by the evidence. The reported straddle injury would not have caused this penetrating trauma. There was no physical evidence to support a straddle injury because there was no bruising on the external vaginal area of this child.

Based on the evidence presented, the Court finds that Mother and Father abused this child within the meaning of the statute. Any form of sexual contact with a child constitutes abuse under Arizona law. Mother and Father were the only persons who had custody and control of the child prior to the injuries being discovered. While Father has a previous conviction based on his sexual contact with a child and he was the primary caregiver for his daughter, J. [REDACTED] made statements implicating both Mother and Father. The Court finds that the Department has proven this statutory ground by clear and convincing evidence.

Best Interests Determination

The Juvenile Court must determine that termination is in the child's best interests by a preponderance of the evidence. *Kent K., id.* at 284 ¶ 22, 110 P.3d at 1018. This is shown by credible evidence that the child would benefit from the severance or be harmed by the continuation of the relationship. *Lawrence R. v. Ariz. Dep't of Econ. Sec.*, 217 Ariz. 585, 587 ¶ 8, 177 P.3d 327, 329 (App. 2008). If the parental rights were severed to this child, she would legally be free for adoption. She is currently living in an adoptive placement. The Court finds by a preponderance of the evidence that severance of the parents' rights is in the best interests of this child.

Conclusion

The Department has met its burden of proof relative to the abuse ground for termination and the best interests finding. The Court therefore terminates the parental rights between Mother and Father and the child.

Custody of the child remains with the Department. The Department has the authority to consent to the adoption of this child when appropriate. All parties are advised to their right to appeal by filing a Notice of Appeal within 15 days of this order. The rules and procedures for doing so are set forth in Rules 88-93 of the Rules of Procedure for the Juvenile Court. After the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

JD 

9/24/2010

appeal time has run, all counsel in this case are relieved from further representation of the parties in this matter.

ppd: 09/24/2010

09/29/2010
DATE

/ s / JUDGE PRO TEM JOAN SINCLAIR
JUDGE PRO TEM JOAN SINCLAIR

PERFORMANCE REVIEWS

Commissioner
Judicial Performance Review Results
2010

Commissioner:	<i>Sinclair, Joan</i>
Appointment Date:	<i>July, 2006</i>
Assignment:	<i>Juvenile</i>

Results of 80 surveys received from Litigants and Witnesses

<u>Litigant/Witness Survey Questions</u>	<u>Strongly Agree/Agree</u>
<i>Treated me with courtesy and respect.</i>	<u>99%</u>
<i>Provided me with an opportunity to be heard.</i>	<u>100%</u>
<i>Demonstrated knowledge of law and procedures.</i>	<u>97%</u>
<i>Made decisions based on evidence.</i>	<u>97%</u>
<i>I understood the Commissioner's decisions and rulings.</i>	<u>99%</u>
<i>Conducted my hearing fairly and impartially.</i>	<u>99%</u>
<i>Made prompt decisions and rulings in my case.</i>	<u>100%</u>
<i>Was professional and dignified.</i>	<u>99%</u>
<i>Maintained control over hearings.</i>	<u>100%</u>

Results of 20 surveys received from Attorneys

<u>Attorney Survey Questions</u>	<u>Strongly Agree/Agree</u>
<i>Treated me with courtesy and respect.</i>	<u>100%</u>
<i>Provided me with an opportunity to be heard.</i>	<u>100%</u>
<i>Demonstrated knowledge of law and procedures.</i>	<u>100%</u>
<i>Made decisions based on evidence</i>	<u>100%</u>
<i>I understood the Commissioner's decisions and rulings.</i>	<u>100%</u>
<i>Conducted my hearing fairly and impartially.</i>	<u>100%</u>
<i>Made prompt decisions and rulings in my case.</i>	<u>100%</u>
<i>Was professional and dignified.</i>	<u>100%</u>
<i>Maintained control over hearings.</i>	<u>100%</u>

Results of N.A. surveys received from Jurors

<u>Juror Survey Questions</u>	<u>Strongly Agree/Agree</u>
<i>Treated everyone with courtesy and respect.</i>	<u>N.A.</u>
<i>Provided everyone with an opportunity to be heard.</i>	<u>N.A.</u>
<i>Demonstrated knowledge of law and procedures.</i>	<u>N.A.</u>
<i>Made decisions based on evidence</i>	<u>N.A.</u>
<i>I understood the Commissioner's decisions and rulings.</i>	<u>N.A.</u>
<i>Conducted my hearing fairly and impartially.</i>	<u>N.A.</u>
<i>Made prompt decisions and rulings in my case.</i>	<u>N.A.</u>
<i>Was professional and dignified.</i>	<u>N.A.</u>
<i>Maintained control over hearings.</i>	<u>N.A.</u>

SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

2010 COMMISSIONER JUDICIAL PERFORMANCE REVIEW

Commissioner: Sinclair, Joan
Department: Juvenile

<i>N = 103</i>				
	Department	Attorney (n = 20)	Defendants/ Litigants (n = 80)	Jurors (n = N.A.)
1	Treated me/everyone with courtesy and respect	3.9	3.8	N.A.
2	Provided me/everyone with an opportunity to be heard	3.8	3.8	N.A.
3	Demonstrated knowledge of law and procedures	3.9	3.8	N.A.
4	Made decisions based on evidence	3.9	3.8	N.A.
5	Made decisions and rulings that the litigants could understand	3.9	3.8	N.A.
6	Conducted hearings fairly and impartially	3.9	3.8	N.A.
7	Made prompt decisions and rulings	3.9	3.8	N.A.
8	Was professional and dignified	4.0	3.9	N.A.
9	Maintained control over hearings	3.9	3.8	N.A.

<i>N = 19</i>		
Staff Questions	Department	Staff (n = 19)
1	Commissioner's oral communications and directions are clear and logical	3.4
2	Commissioner's behavior is dignified	3.8
3	Commissioner is courteous	3.8
4	Commissioner's conduct promotes public confidence in the court and Commissioner's ability	3.7
5	Commissioner is punctual in conducting proceedings	3.6
6	Commissioner maintains proper control over courtroom	3.7
7	Commissioner is a hard worker	3.6
8	Commissioner treats staff with respect	3.8
9	Commissioner cooperates with peers	3.6
10	Commissioner cooperates with staff	3.7
11	Commissioner manages calendar efficiently	3.5

Mean Score: Measured using "1" as strongly disagree and "4" as strongly agree. Score excludes "No Responses", "No Opinion" and "Undecided".
 N.R.: No Responses N.A.: Not Available

SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY
2008 COMMISSIONER JUDICIAL PERFORMANCE REVIEW

Commissioner: Sinclair, Joan

Department: Juvenile Court

N = 66		All Self Evaluated Mean Score	Department	Self Evaluation	Attorney (n = 10)	Defendants/ Litigants (n = 54)	Jurors (n = 0)	Staff (n = 2)
1	Treated everyone with courtesy and respect	3.8	3.8	4	3.7	3.7	NR	3.5
2	Provided everyone with an opportunity to be heard	3.7	3.8	4	3.7	3.6	NR	3.5
3	Demonstrated knowledge of law and procedures	3.4	3.7	4	3.4	3.6	NR	4.0
4	Made decisions based on evidence	3.8	3.7	4	3.6	3.7	NR	3.0
5	Made decisions and rulings that the litigants could understand	3.5	3.7	4	3.4	3.7	NR	3.0
6	Conducted hearings fairly and impartially	3.8	3.7	4	3.6	3.6	NR	3.5
7	Made prompt decisions and rulings	3.6	3.7	4	3.6	3.6	NR	3.5
8	Conducted myself in a professional and dignified manner	3.7	3.8	4	3.7	3.7	NR	3.5
9	Maintained control over hearings	3.6	3.7	4	3.5	3.7	NR	3.5

Mean Score: Mean (average) is measured using "1" as strongly disagree and "4" as strongly agree. Mean Score does not include "No Responses" and those who responded to "Undecided".
 NR: No Response